



**National Association for the Advancement of Colored People
Huntsville-Madison County Branch**

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May 7, 2014

Via Electronic Mail
 The Honorable Judge Madeline Hughes Haikala
 United States District Judge
 The United States District Court
 The Northern District of Alabama
 Hugo L. Black U. S. Courthouse
 1729 Fifth Avenue North
 Birmingham, Alabama 35203

Reference: Hereford v. Huntsville City Board of Education
 No. 5:63-cv-00109-MHH

Dear Judge Haikala:

On behalf of the members of the Huntsville-Madison County Branch of the NAACP this letter is written in support of the Student Assignment Plan as represented in the brief filed by the Department of Justice of the United States of America (DOJ). This matter has been contentious at best and many representations have been made by various parties, which often are not in the interest of the education of our children and the community. We understand the complexities of the demographics and the geographies that are necessary for a comprehensive student assignment plan.

The Huntsville City Schools and the Chamber allege that there were more than adequate discussions and dissemination of information to the community before the discussions began with DOJ. Our contention is that we were not invited to participate in the formulation or even discuss the plan before it was prepared for submittal to the Court. The meetings that were referred to by the Chamber were held just a few days before the plan was submitted, specifically: Thursday, January 30, 2014 through Wednesday, February 5, 2014. The Motion was submitted to the Court on February 7, 2014.

In a news article, dated December 2, 2013, (attachment 1) entitled, "Huntsville school board says fed won't let them talk about plan to close schools, change zone lines" the question was asked, "How did the Huntsville school board decide to close Butler High School without voting on or even debating the matter during an open meeting?" The response by School City School Board President David Blair was, "The feds are not letting us have those conversations right now." He also stated, "It's not one of those things where we sat down as a group and talked." He further stated, "It was a plan that Casey (Wardynski) and (board attorney) J. R. (Brooks) put together and discussed with the Department of Justice." It was because of this failure to be transparent

and failure to communicate that resulted in local black leaders, seeking information about the plan from DOJ.

The primary refutation of the “Gag Rule” statement made by board member Laurie McCaulley and board president David Blair is contained in a letter dated December 17, 2013 from Sarah Hinger, Esq. of the U.S. Department of Justice (Attachment 2) which is an admonishment to HCS and board attorney J. R. Brooks and states that, “The United States has never raised an objection, and has no objection, to the District distributing or discussing its proposal for school construction, closures, redistricting, or any other District policies, with the community . As you know, the District’s final Plan must be approved by the Court pursuant to the desegregation orders governing the Huntsville City School District.”

The letter further states, “As you know, “whether the school district has demonstrated to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts’ decree” is an important consideration in evaluating whether a school district has complied with its desegregation obligations in working toward unitary status. *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995) (quoting *Freeman v. Pitts*, 503 U.S. 467, 491 (1992)). It is thus to the benefit of all parties that the District ensures that community concerns are responded to and that the District establish a strong, positive relationship with parents and the public”.

It is the opinion of the Huntsville-Madison County Branch of the NAACP, whose mission is equality and justice to all in the quest for equal educational opportunity, that the HCS’s Student Assignment Plan is not fair and equal to all students. One of the major failures of the plan is that magnet programs are being put in place to further diversify North Huntsville schools, but there is nothing in the plan to further diversify Grissom and Huntsville High Schools. It is also our understanding that the motion to the court was for the approval of the HCS’s Student Assignment Plan, therefore the other green factors concerning the obtaining of unitary status would not be ruled on this motion. Evidently, DOJ’s Brief to the Court indicated the same understanding by not addressing new advanced academic programs, increased student transportation and enhanced magnet programs.

In conclusion, we believe that the HCS and the members of the majority community’s leadership have failed its obligation of transparency and fairness in the Student Assignment Plan process. We also believe that this plan was intentionally subversive for the purpose of creating a student assignment plan that would not be fair to minority children.

Sincerely,



Alice F. Sams
President
Huntsville-Madison County NAACP Branch

Attachments:

1. AL.com News Article, dated December 2, 2013
2. Letter from DOJ dated December 17, 2013

Attachment 1:

Hereford v. Huntsville City Board of Education
No. 5:63-cv-00109-MHH

Huntsville school board says feds won't let them talk about plan to close schools, change zone lines

IMG_20131202_143518_599.jpg

Butler High School in Huntsville (Challen Stephens / cstephens@al.com)

Challen Stephens | cstephens@al.com By **Challen Stephens | cstephens@al.com**

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on December 02, 2013 at 3:09 PM

"We still have the right to say this doesn't benefit the community."

How did the Huntsville school board decide to close Butler High School without voting on or even debating the matter during an open meeting?

The short answer is: The Justice Department told them to keep quiet.

"The feds are not letting us have those conversations right now," said board president David Blair during an interview on Friday.

The federal secrecy has caused problems.

Politicians in north Huntsville **continue to fume** over being forced to forfeit the name and legacy of Johnson High School. Madison County Commissioner Bob Harrison last week called the name change part of an arrogant charade by school officials, saying the story on the new Johnson keeps changing.

And it has.

Over the last year, talk went from renovating Johnson to rebuilding Johnson to relocating Johnson to finally merging Johnson and Butler at a new campus. Politicians in north Huntsville argue that mostly white Grissom High in south Huntsville gets to keep its name while moving to a new building, so the predominantly black Johnson High should get to do the same.



Huntsville school board member Laurie McCaulley (Huntsville)

Board member Laurie McCaulley last month said that it's only fair to the Butler students to give the new building a new name.

But the board had not announced the merger of the two schools when the **protests began**. How was the public supposed to know? How could supporters of Johnson know their situation was different than Grissom's if the board never told them?

Times file)

And more importantly how did the board, sworn to conduct public business in public, decide to merge two schools without discussing the matter in an open meeting?

The long answer is more nuanced. Someone here had to come up with that plan. Superintendent Casey Wardynski did just that.

In the spring he shared his zoning plan with many around town, including board members. **That plan** calls for closing Butler, as well as closing other schools, making numerous adjustments to zone lines and school configurations throughout the city.

The changes would affect most high schools in Huntsville.

"It's not one of those things where we sat down as a group and talked," said Blair. "It was a plan that Casey (Wardynski) and (board attorney) J.R. (Brooks) put together and discussed with the Department of Justice."

David Blair, president of the Huntsville City school board (Bob Gathany/bgathany@al.com)

That plan remains unofficial until submitted to the board for a vote. And the board doesn't want to vote on the zone lines until the Justice Department agrees to the plan.

As plaintiffs in the city's 43-year-old federal desegregation lawsuit, the Justice Department might object or suggest changes. That's one reason Wardynski hasn't presented the new zone lines for public debate.

Brooks, the long-time school board attorney, said that he could not recall an executive session held by the board to discuss Butler.

But he said that there are several exceptions to the open meetings act, including discussion of pending litigation, which might apply in this case. He also said the state open meetings law would not bar board members from having one-on-one conversations with the superintendent.

As for negotiations with the Department of Justice, Brooks said: "We agreed from the beginning that our discussions would be confidential."

Meanwhile, the Justice Department has agreed to the plan to build new schools all over the city.

In addition to a new northern and a new southern high school, the plan calls for completion of a K-8 for University Place and Terry Heights, as promised in federal court back in 2008; the completion of a new building to replace Lincoln and Martin Luther King Jr. elementary schools, as promised in court in 2008; construction of a ninth grade academy at Huntsville High; and replacement of Whitesburg Elementary and Middle. (**Click here to read the full construction agreement.**)

The board also announced plans to move the Academy for Academics and Arts to the Ed White building.

Huntsville ISD Superintendent Casey Wardynski (file photo)

"We discussed the motion to the court in public. I read it line by line in an open meeting," said McCaulley of the **construction plan**. That was filed in federal court in May.

McCaulley says the Butler merger was part of that plan, but no one picked up on it. The construction plan does not mention Butler by name. But the plan calls for closing Ed White Middle, now zoned for Butler, and sending those students to the new northern school.

"You take away all the feeder schools. If nothing is feeding you, then you are not existing," said McCaulley.
"We discussed the feeder schools in public."

The closing of Butler High is hardly a surprise. The school has been targeted for years, as board members and state officials and even an independent demographer have talked of shutting down a school that operates at less than half capacity.

But when Wardynski arrived, he threw out those plans and **said he intended to keep Butler open**. Closing Butler first surfaced in public in April of this year. When asked about possible rezoning, Blair in April predicted Butler High would likely be shuttered. "If you look at the population density, there's just not enough population there to support Butler at this point," said Blair.

Yet in 2012, the **board's long-range plans** still called for a separate Butler High to be rebuilt after 2018.

It wasn't until October of this year that **McCaulley** and **Blair** began to talk in public about Butler merging with Johnson.

J.R. Brooks, Huntsville school board attorney
(Huntsville Times file)

McCaulley last week shared details, saying about 500 Butler students would go to Johnson. She said the remaining 280 would divided among Huntsville High, Grissom and Columbia.

None of that is official yet, because no plan has been submitted to the board. "We just know what we'd like to see happen," said McCaulley.

She said once the Justice Department agrees to a zoning plan, "then we come back and tweek it to what side of the street" goes to which school.

"We still have the right to say this doesn't benefit the community," said Blair of any zone line changes once they finally reach the board. But he added: "There are some pieces that are kind of a done deal."

"Butler closing, that's going to happen," he predicted.

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**U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section**

AB:SAS:SH:JG
DJ 144-1-1

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December 17, 2013

Via Electronic Mail

J.R. Brooks, Esq.
Lanier Ford Shaver & Payne P.C.
200 West Side Square, Suite 500
P.O. Box 2087
Huntsville, AL 35804

Re: Hereford & United States v. Huntsville City Board of Education, Civil Action No.
63-109 (N.D. Ala.)

Dear J.R.:

The United States has received a number of communications from community members expressing concern regarding a perceived lack of transparency with the public in the District's decision making process surrounding planned construction, school closures, and redistricting. A Huntsville City School Board Member has also recently been quoted in the press stating that the United States Department of Justice has prevented the School District from communicating with the community about its proposals.¹

The United States has never raised an objection, and has no objection, to the District distributing or discussing its proposals for school construction, closures, redistricting, or any other District policies, with the community. As you know, the District's final plan must be approved by the Court pursuant to the desegregation orders governing the Huntsville City School District. In

¹ Challen Stephens, *Huntsville School Board Says Feds Won't Let Them Talk About Plan to Close Schools, Change Zone Lines*, AL.com, Dec. 2, 2013, available at http://blog.al.com/wire/2013/12/huntsville_school_board_says_f.html.

recent months, the District, Private Plaintiffs, and the United States have engaged in negotiations, which all parties understood would remain confidential, regarding possible plans to be submitted to the Court. The United States observes the confidential nature of these negotiations and does not make public any conversations or materials provided by the District to the United States in the course of discussions. However, this does not prevent the District from sharing information regarding its own initial proposals with the community or from communicating with the public in the course of developing its proposals.

As you know, “whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the whole of the courts’ decree” is an important consideration in evaluating whether a school district has complied with its desegregation obligations in working toward unitary status. *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995) (quoting *Freeman v. Pitts*, 503 U.S. 467, 491 (1992)). It is thus to the benefit of all parties that the District ensure that community concerns are responded to and that the District establish a strong, positive relationship with parents, students and the public.

As always, please do not hesitate to contact me with any questions or concerns.

Sincerely,



Sarah Hinger
Trial Attorney